

STATE OF MICHIGAN
COURT OF APPEALS

LINDA BELCHER,

Plaintiff/Counterdefendant-Appellee,

v

FRANK BELCHER, SR.,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED

November 23, 2004

No. 248900

Wayne Circuit Court

LC No. 02-209779-DM

Before: Borrello, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, challenging both the award of spousal support and the court's property division. We affirm.

The parties were married in 1972, and separated in 2000. Defendant had been employed with the Internal Revenue Service since 1979, earning at the time of judgment approximately \$62,000 a year. Plaintiff had no advanced education, and had worked only as a homemaker for approximately thirty years, occasionally earning modest supplemental income as a babysitter.

Several children were born of the marriage, but only one remained a minor at the time of divorce. The trial court awarded the parties joint legal custody, and plaintiff primary physical custody, of that child, and ordered defendant to pay \$157 a week in child support. These aspects of the judgment below are not at issue on appeal.

The trial court equally divided the parties' interests in the marital home, defendant's two life insurance policies, pension, annuity, savings account, and certificate of deposit, and further ordered defendant to pay \$5,250 toward plaintiff's debts, and to pay plaintiff \$225 a week in lifetime spousal support.

In reviewing divorce judgments, "[t]he appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. . . . [T]he dispositional ruling . . . should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992) (footnote omitted).

I. Spousal support

The trial court awarded plaintiff “permanent, modifiable spousal support in the amount of \$225.00 per week, . . . to be reviewed by the Friend of the Court upon the motion of either party at the time that the child support order is no longer operative and at the time that Defendant retires, until Plaintiff’s death or re-marriage”

When determining whether to award alimony or spousal support, the court should consider “the length of the marriage, the parties’ ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case.” *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). “The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party.” *Id.*

Defendant does not argue that no spousal support should have been awarded, but argues instead that it should have been a “reasonable amount . . . limited to a specific amount of years.” In arguing that the award was excessive, defendant challenges several of the trial court’s findings and conclusions.

Defendant argues that allowing plaintiff to retain the marital home, but with the obligation to buy out defendant’s half of its equity, worked to plaintiff’s detriment, suggesting that the house should instead have been sold, producing approximately \$60,000 in cash for plaintiff. However, the court did not bar plaintiff from selling the house and seeking alternative shelter for herself and the parties’ minor child. And defendant does not suggest that plaintiff turn the house into a true income generator, e.g., by taking in boarders. Nor does defendant explain how liquidating the house, but then enduring the expenses of living elsewhere, would greatly reduce plaintiff’s need for supplemental income. Defendant fails to show that the trial court erred in this regard.

The trial court announced an intention to divide the marital assets equally, and noted that, in this regard, none would produce income for plaintiff immediately, only plaintiff’s share of defendant’s retirement standing to do so in the future. Defendant argues that the court in fact awarded the greater part of the assets to plaintiff, because she was awarded all the furniture in the marital home along with her three fur coats, and because defendant was ordered to pay \$5,250 toward plaintiff’s credit card debts.

Concerning the furniture and the coats, the trial court concluded that the furniture was of “minimal value,” and that the coats “were . . . gifted to the plaintiff during the marriage.” Defendant disputes neither conclusion. Defendant fails to show that the trial court erred either in regarding the furniture as having little value, or in apparently insulating the fur coats from division on the ground that they were a gift to plaintiff.

Concerning the \$5,250 defendant was ordered to pay toward plaintiff’s debts, the trial court credited plaintiff’s testimony that she had been relying on her credit card to support herself since the separation, and owed a balance of \$21,000, half of which went to support plaintiff during the separation. The court determined that half of that half should be equally divided. Defendant does not contest that the \$5,250 he was ordered to contribute toward plaintiff’s debts

covered marital expenses incurred during the separation. Defendant thus fails to show that the property distribution was unequal.

Defendant argues that the trial court erred in contrasting his substantial education and employment with plaintiff's lack of advanced education and history as a homemaker, pointing out that plaintiff had worked at Chrysler when the parties married, and that she received payment for babysitting during the marriage. However, plaintiff's outside employment nearly thirty years earlier does not bear on her status as a homemaker ever since, and we think it obvious the part-time babysitting at home is consistent with plaintiff's role as a homemaker. Defendant additionally argues that plaintiff could get a job, despite her age, and lack of education or driver's license, asserting, without citation,¹ that the record indicates that plaintiff lives near several bus stops and various stores. However, defendant's speculation that plaintiff could catch the bus to attend to some unspecified position with a local merchant does not rebut the trial court's finding that plaintiff is ill-suited to enter the job market. Defendant fails to show any error in what the court had to say in this regard.

Defendant points out that he is obliged to pay child support, but argues neither that plaintiff should bear the greater burden in this regard, nor that her resulting obligation in the matter is any less burdensome than defendant's. Defendant thus fails to show that he bore some greater child support obligation for purposes of arguing that his spousal support obligation should have been mitigated because of it.

Defendant complains that the trial court failed to recognize that he had the greater living expenses, because he was in an apartment as opposed to plaintiff's paid-for house. However, defendant fails to note that while plaintiff was awarded the house, she had to obtain a mortgage to buy out his share of the equity in it. Nor does defendant detail how his apartment expenses otherwise exceed plaintiff's household expenses. Defendant argues generally that his expenses are approximately \$1,800 a month. However, the trial court expressly concluded that defendant's representations in this regard were "inflated," and defendant fails to argue, or otherwise show, that the trial court clearly erred in so concluding.

We are not convinced by defendant's factual protestations on appeal. Because defendant neither shows that the trial court clearly erred in any of its factual findings, nor firmly demonstrated that the award of spousal support was inequitable, we affirm that award.

II. Property Division

When dividing a marital estate, the goal is to make an equitable division of the marital property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court." *Id.* at 114-115.

¹ We caution appellate counsel against expecting this Court to search through trial transcripts to find the factual basis for uncited assertions. See MCR 7.212(C)(7); *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

Defendant generally agrees that an equal division of the house and the financial assets is appropriate, but takes issue with plaintiff having been awarded the marital furniture and her fur coats without any valuation being placed on them, with the division of his pension, and with the requirement that he contribute \$5,250 toward plaintiff's credit card debts.

Concerning the latter, in July 2003 defendant accepted \$26,812 from plaintiff, which plaintiff's attorney explained covered his share of the equity in the house, less plaintiff's share of financial assets in defendant's hands, including the \$5,250 to be applied to plaintiff's debts. "As a general rule, a [party] who accepts satisfaction, in whole or in part, of a judgment in his favor for money or property entered as upon a common-law action, waives his right to maintain an appeal or to seek a review of the judgment for error." *Wohlfert v Kresge*, 120 Mich App 178, 180; 327 NW2d 427 (1982), quoting 169 ALR 989, and citing *Westgate v Adams*, 293 Mich 559; 292 NW 491 (1940). The reason for the rule is to avoid putting money or property already tendered and received as the result of a judgment in issue a second time. *Wohlfert, supra* at 180. The rule does not operate, then, where "the appeal cannot affect the benefits already accepted." *Id.* Defendant's acceptance of the check, then, waives appellate arguments in regard to the particulars that the check expressly covered, including his obligation to contribute \$5,250 to plaintiff's debts.²

Concerning the furniture and coats, again, the trial court concluded that the furniture was of "minimal value," and that the coats "were . . . gifted to the plaintiff during the marriage," and defendant fails to argue, let alone prove, that the court clearly erred in either regard. It was not inequitable, then, to regard the coats as items that, by defendant's own design, came to be very personal to plaintiff. And the furniture of minimal value cannot create a "significant departure[] from congruence" as to require special explanation or justification. *Byington, supra* at 114-115.

This leaves the matter of defendant's pension, of which the court awarded plaintiff a half interest in benefits that accrued from the date of the marriage through the date of the judgment. Defendant's argument in this regard consists of asserting that the trial court should have awarded him more than half of his pension, because defendant "was ordered to pay child support and spousal support." As previously discussed, however, defendant neither argues that plaintiff should bear the greater financial burden in supporting their child, nor that her resulting obligation in the matter is any less burdensome than defendant's. Concerning the equal division of pension benefits earned through the course of the marriage, defendant cites no authority for the proposition that, where one divorcing spouse is ordered to pay both spousal and child support, that party has some presumptive right to a greater share of any of the marital property. Defendant's cursory observation that he has those two continuing obligations hardly creates the "firm conviction" that the equal division of the marital estate, including certain pension benefits, was inequitable. *Sparks, supra* at 152.

² Moreover, as previously discussed, defendant fails to show that the trial court clearly erred in regarding that sum as half the share of plaintiff's living expenses during the separation, or argue that this should not be considered a marital obligation.

For these reasons, defendant has failed to show that the trial court's property division was inequitable.

III. Appellate Attorney Fees

Plaintiff devotes several pages of her brief on appeal to arguing that this Court should order defendant to pay her appellate attorney fees, on grounds including that it was vexatious for defendant to pursue the appeal after accepting payment for his share of equity in the marital house, calculated also to take into account other financial aspects of the judgment.

The court rules currently require that such requests take the form of separate motions, as opposed to requests contained within other pleadings, including briefs. MCR 7.211(C)(8). Under the rule, "[a] party may file a motion for damages or other disciplinary action under MCR 7.216(C) at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious." Accordingly, we decline to consider plaintiff's request for appellate attorney fees.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Janet T. Neff